

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

40722

FILE: B-186077

DATE: April 6, 1976

MATTER OF: Rocky Mountain Helicopters

99100

DIGEST:

1. Protest against failure of procuring agency to set aside procurement for small business filed after award is untimely under § 20.2(b)(1) of Bid Protest Procedures which requires protests against alleged improprieties in invitation which are apparent prior to bid opening be filed prior to bid opening to be timely.
2. Oral statement by procurement personnel at bid opening that solicitation is small business set-aside does not affect invitation which was issued on unrestricted basis as such statements cannot alter written invitation which controls award.

Rocky Mountain Helicopters (Rocky Mountain) has protested the award of a contract to Evergreen Helicopters under invitation for bids No. YA-514-IFB6-41 issued by the Bureau of Land Management (BLM), Department of the Interior.

Rocky Mountain's protest is grounded on the fact that it believed the solicitation was a small business set-aside and Evergreen, being a large business, was therefore not eligible for award.

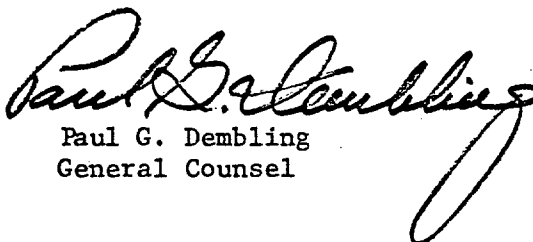
Our Office has ascertained that while the advance notice of the forthcoming solicitation which was sent to prospective bidders indicated that the procurement would be a small business set-aside, the contracting officer, upon receiving requests for the bid package in response to the advance notice, determined that there was not a reasonable expectation that bids would be obtained from a sufficient number of small business concerns so that award would be made at a reasonable price. Therefore, the solicitation was issued on an unrestricted basis.

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In support of its protest, Rocky Mountain states that it made an inquiry at the bid opening and was advised by an employee of ELM that the procurement was a small business set-aside.

Based on the above facts, we find the protest to be untimely under § 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)). A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed by bid opening in order to be timely under § 20.2(b)(1). The failure to set aside a solicitation for small business is such an impropriety, which a careful examination of the invitation would have revealed, and should have been protested prior to bid opening. Rocky Mountain's protest was not filed with our Office until after award and is therefore untimely and will not be considered on the merits.

Regarding the statement made at bid opening by the ELM employee, such a statement does not affect the nature or conditions of a solicitation which is controlled by the written invitation for bids. See paragraph 3 of Standard Form 33A.


Paul G. Dembling
General Counsel